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INTRODUCTION:

WOUNDS OF WAR: MEETING THE NEEDS OF ACTIVE-DUTY MILITARY PERSONNEL AND VETERANS WITH POST-TRAUMATIC STRESS DISORDER

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Nearly twenty percent of all returning troops are reporting symptoms of Post-Traumatic Stress Disorder (PTSD).¹ And those are just the ones we know about.

Despite a heightened social awareness of the problem, the numbers continue to rise. “Of the more than 2.6 million active-duty, National Guard, and reserve service members who have been deployed to Operation Enduring Freedom (OEF) in Afghanistan since 2001 and Operation Iraqi Freedom (OIF) since 2003, an estimated 13–20% of them have or may develop PTSD.”² Almost 30% of veterans treated at Department of Veterans Affairs (VA) hospitals and clinics have been diagnosed with PTSD.³ Veterans advocates say even those numbers do not tell the whole story.⁴

While PTSD is typically associated with high anxiety and depression, the disorder is complex. Like its origins, PTSD manifests in complicated and numerous ways. Symptoms include, among others, distressing nightmares, flashbacks, diminished interest in significant activities, detachment from others, sleep problems, irritability, concentration problems, and hypervigilance.⁵ The symptoms can be debilitating, so much so that the disorder

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1. *One In Five Iraq and Afghanistan Veterans Suffer from PTSD or Major Depression*, RAND CORPORATION (Apr. 17, 2008), <http://www.rand.org/news/press/2008/04/17.html>.

2. THE NATIONAL ACADEMIES, INSTITUTE OF MEDICINE, TREATMENT FOR POSTTRAUMATIC STRESS DISORDER IN MILITARY AND VETERAN POPULATIONS: INITIAL ASSESSMENT xiii (2012).

3. JAMIE RENO, *Report: Nearly 30 percent of Iraq, Afghanistan veterans have PTSD*, DENVER POST, Oct. 24, 2012, <http://www.americanhomecomings.com/news/2012/10/24/report-nearly-30-percent-of-iraq-afghanistan-veterans-have-ptsd/>.

4. Some advocates, for example, says the VA has been “underestimating” the number of veterans with PTSD for years. *Id.*

5. THE NATIONAL ACADEMIES, *supra* note 4 at 27.

can result in marital and family difficulties, loss of jobs, bankruptcies, and even suicide. According to reports, Pentagon records show 349 suicides among active-duty troops in 2012.⁶ This number exceeded the 301 suicides recorded in 2011 and the Pentagon's own internal projection of 325.⁷

In our own backyard—in suburban South Florida—a decorated veteran machine gunner in the Marine Corps who had been diagnosed with PTSD took his own life.⁸ John Lutz had earned thirteen commendations while serving in Afghanistan and Iraq, but had struggled with PTSD and depression since his discharge eighteen months prior to his death.⁹

These alarming statistics and the stories of people such as John Lutz drive home the importance of focusing attention on the epidemic of PTSD.

The legal system has tried in some ways to address issues raised by PTSD. Once veterans struggling with the disorder encounter the legal system through criminal charges, for example, veterans' courts have been developed across the country as pretrial diversion programs assisting veterans in obtaining the assistance they may need. Nova Southeastern University (NSU) was an appropriate place to host a national PTSD symposium because we are fortunate here in South Florida to have a veterans' court in each of Miami-Dade, Broward and Palm Beach counties. The Honorable Edward Merrigan, who recently became judge of the Broward County Veterans Court, shared his expertise with us at the symposium and discussed the functioning of that problem-solving court.

Those problem-solving courts build upon the important work of another distinguished symposium participant. The Honorable Ginger Lerner-Wren created the nation's first mental health court, another form of problem-solving court, here in Broward County around ten years ago.

Indeed, committed and innovative members of the judiciary exemplify the myriad ways in which the community has mobilized to combat the increase in incidence of soldier suicide and other manifestations of PTSD among veterans and active-duty military personnel. Problem-solving courts are a critical component to finding help for those struggling with PTSD.

All such problem-solving courts build upon the work of two law professors who developed and nurtured "therapeutic jurisprudence," or "TJ," as a

6. Robert Burns, *2012 military suicides hit a record high of 349*, AP, (Jan. 14, 2013), <http://bigstory.ap.org/article/2012-military-suicides-hit-record-high-349>.

7. *Id.*

8. Mike Clary, *Marine From Davie Takes Own Life After Battling Demons of War*, SUN-SENTINEL, January 16, 2013, http://articles.sun-sentinel.com/2013-01-16/about/fl-marine-suicide-20130115_1_john-lutz-8th-marine-regiment-helmand.

9. *Id.*

legal theory.¹⁰ TJ “asks us to look at law as it actually impacts people’s lives” and focuses on the law’s influence on emotional life and psychological well-being. It suggests that “law should value psychological health, should strive to avoid imposing anti-therapeutic consequences whenever possible, and when consistent with other values served by law should attempt to bring about healing and wellness.”¹¹

However, the law cannot repair all of the problems created by PTSD. In organizing the symposium at NSU, we worked hard to reach out to various experts and showcase creative approaches to the problem of PTSD as a medical, psychological, social, interpersonal, and legal problem. Speakers, for example, ranged from a physical therapist currently practicing with the Army to a representative of the National Alliance on Mental Illness; from an NSU alumnus/officer in the Florida Army National Guard to a psychiatric clinical social worker with the Broward County Veterans Administration Clinic. Most important, we were also honored to host veterans struggling with PTSD who courageously shared their stories with us. The presentations from veterans and members of veterans’ families gave all of us—organizers, participants, and attendees alike—unique insight that helped us all better understand the complexity of the issues PTSD raises.

Michael Cubbage was brave enough to take the stage at our symposium and share his story with the world. We are incredibly grateful for his willingness to help us truly see and hear the veterans who give up so much for us but often get so little in return. Cubbage, 1LT United States Army, was joined at his panel by Carlo Galluccio and Paula Lawler Gallucico, a married couple who addressed the impact of PTSD on veterans and their families. On that panel as well, D. Nicole Johnson Starr, founder of the PTSD Retreat, gave everyone in the audience a taste of what PTSD feels like with an interactive demonstration; and Dr. Kate McGraw of the Defense Centers of Excellence addressed the effects of PTSD on women warriors. And though he could not join us in person, Pulitzer-Prize-winning photographer Craig Walker shared a slide show of photographs of Scott Ostrom, a veteran living with PTSD. In raw and unforgettable images, we were able to see up close the constant and overwhelming impact of PTSD.¹²

10. See, e.g., DAVID B. WEXLER & BRUCE J. WINICK, *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE* (1996).

11. Michael L. Perlin, “*John Brown Went off to War*”: *Considering Veterans Courts as Problem-Solving Courts*, 37 NOVA L. REV. 3, 9 (2013).

12. *Craig F. Walker of Denver Post Wins Pulitzer Prize for Feature Photography*, THE DENVER POST, Apr. 16, 2012, http://www.denverpost.com/breakingnews/ci_20408466/craig-f-walker-denver-post-wins-pulitzer-prize#ixzz2J1QEIZNW.

The articles in this symposium reflect the desire to craft creative solutions—both in and outside the box—to combat the PTSD problem. This symposium features articles from a variety of psychological, psychiatric, medical, sociological, and philosophical experts.

Clinical psychologists Raquel Andres-Hyman and Scott M. Hyman, from the Miami Veterans Affairs Healthcare System and Carlos Albizu University respectively, lead this special issue of the *Nova Law Review* with *An Overview of Combat-Related Post-Traumatic Stress Disorder (PTSD)*.¹³ These two authors introduce us to the difficulties faced by those fighting in Iraq and Afghanistan, in Operation Enduring Freedom, and Operation Iraqi Freedom, many of whom, as reservists and National Guard soldiers, lack the security and support inherent in residence on base as active-duty service personnel. Combined with the inherent stressors of combat; the inability to distinguish between combatant and non-combatant, friend and foe, the circumstances of deployment have combined to lead to an unprecedented number of returning warriors suffering from PTSD. PTSD is “an anxiety disorder induced by exposure to a traumatic event. Although the psychological effects of combat have long been recognized (in previous wars, the symptoms now associated with PTSD were known as ‘shell shock’ or ‘battle fatigue’), the American Psychiatric Association did not codify PTSD as a separate mental disorder until 1980.”¹⁴ These authors introduce the reader to the diagnosis and its co-morbidities, effects, and treatment. Their article thus equips the reader to absorb the remaining articles in this issue with a solid grounding in clinical facts.

The most devastating effect of PTSD is suicide, and psychologist Daniel Reidenberg tackles that subject with law student co-author Natasha Shaikh in *Making Post-Traumatic Stress Disorder A Priority: Saving Veterans From Suicide*.¹⁵ Suicide is rampant among the armed forces; in late January 2013, just a few days before this symposium, the Associated Press reported that Pentagon records revealed 349 suicides among active-duty troops last year, up from 301 the year before and exceeding the Pentagon's own internal projection of 325.¹⁶ These authors discuss not only the problems

13. Raquel Andres-Hyman & Scott M. Hyman, *An Overview of Combat-Related Post-traumatic Stress Disorder (PTSD)*, 37 NOVA L. REV. 3 (2013).

14. CONGRESSIONAL BUDGET OFFICE, THE VETERANS HEALTH ADMINISTRATION'S TREATMENT OF PTSD AND TRAUMATIC BRAIN INJURY AMONG RECENT COMBAT VETERANS app. A at 23 (2012), <http://www.cbo.gov/sites/default/files/cbofiles/attachments/02-09-PTSD.pdf>.

15. Daniel Reidenberg & Natasha Shaikh, *Making Posttraumatic Stree Disorder a Priority: Saving Veternas From Suicide*, 37 NOVA L. REV. 3 (2013).

16. Burns, *supra* note 8.

faced by professionals attempting to treat combat-related PTSD, but also the ways in which the legal system contributes to those problems. Specifically, they take to task the VA's almost untrammelled authority over veterans' benefits decisions, flaws in the law governing the awarding of those benefits, and a federal law preventing the VA and the Department of Defense from learning whether military personnel and veterans own firearms. Despite efforts to improve the current state of affairs, the authors conclude that the current system is lacking. In fact, they conclude, "if we were as quick to help veterans as we are to send them off to war, suicide rates among veterans with PTSD would not be as high."¹⁷

As Reidenberg and Shaikh acknowledge in their article, the legal system has tried in some ways to address issues raised by PTSD. As discussed previously, veterans' courts exist as a form of pretrial diversion, assisting veterans in obtaining assistance after they encounter the criminal justice system as a result of their disorders. Professor Michael Perlin from New York Law School analyzes the operation of those courts in his article "*John Brown Went Off to War*": *Considering Veterans' Courts As Problem-Solving Courts*.¹⁸ With a long history of representing those with mental disabilities, including representation of the plaintiff class in the case that prompted the VA to promulgate its first Patients' Bill of Rights,¹⁹ Professor Perlin is uniquely situated to discuss veterans' courts as problem-solving courts within a broader TJ movement.

In efforts to assist those with mental disabilities in healing (or rehabilitating), courts such as mental health courts have sometimes pursued TJ goals without fully honoring the guarantees of due process. Professor Perlin urges that veterans' courts have the potential to significantly improve treatment of veterans with PTSD within the criminal justice system even while cautioning that the judges of those courts must respect their veteran-defendants as human beings in order to fulfill their promise.

Indeed, the law cannot provide all the answers, or even most of them. Better practice is to prevent encounters with the criminal justice system at all, rather than the use of problem-solving courts for veterans with PTSD. In *Dismantling America's Largest Sleeper Cell: The Imperative to Treat, Rather Than Merely Punish, Active Duty Offenders With PTSD Prior to Dis-*

17. Daniel Reidenberg & Natasha Shaikh, *Making Posttraumatic Stress Disorder a Priority: Saving Veterans From Suicide*, 37 NOVA L. REV. 3, 102 (2013).

18. Michael L. Perlin, "*John Brown Went off to War*": *Considering Veterans Courts as Problem-Solving Courts*, 37 NOVA L. REV. 3 (2013).

19. *Falter v. Veterans Admin.*, 632 F. Supp. 196, 203 (D.N.J. 1986) ("In December 1982, the V.A. Patients' Bill of Rights was promulgated.").

charge *From the Armed Forces*,²⁰ U.S. Army Major Evan R. Seamone, Chief of Military Justice, Maneuver Center of Excellence & Fort Benning, Georgia, argues that the armed forces must take PTSD into account within its disciplinary structure. Currently, those who have violated the military code due to PTSD are likely to be dishonorably discharged, thus effectively precluding their receipt of benefits funding treatment of that condition. Major Seamone argues that, instead, the armed forces has an obligation to recognize defendants' PTSD and to cooperate with civilian agencies in obtaining treatment for it while offenders are still under military control. Indeed, because the military has trained these offenders specifically to injure, even kill, and then discharges them into the civilian society without realistic chances of obtaining treatment, Major Seamone argues that the obligation to assist offenders in obtaining treatment before discharge rises to the level of a "mandate under the precautionary principle which guides the laws of public health and safety."²¹

Philosopher E. Ann Jeschke agrees with Major Seamone that it is not sufficient to rely upon the legal system to remedy PTSD's effects. In *The Moral Trauma of America's Warriors: Why We Must Treat Combat Post-Traumatic Stress Disorder as a Bio-Psycho-Social-Spiritual Phenomenon*,²² Ms. Jeschke argues that combat "dismantle[s] a warrior's moral identity and must be addressed in order for the holistic healing of the warrior to occur."²³ Drawing on resources as diverse as literature and philosophy, Ms. Jeschke analyzes and finds wanting currently recommended VA and Department of Defense treatments for PTSD. Specifically, she argues that, rather than relying solely on currently recommended treatments, which address PTSD as an individualized, trauma-induced phenomenon, clinicians also should be attuned to the spiritual needs of their patients. She concludes that it is only by treating their entire condition, biologically, psychologically, socially, and spiritually, that America's wounded warriors can be healed.

This symposium explores nontraditional solutions for an extraordinary and persistent problem. It also represents the best of collaborative efforts among those committed to finding a solution. We hope it inspires our readers.

20. Evan R. Seamone, *Dismantling America's Largest Sleeper Cell: The Imperative to Treat, Rather than Merely Punish, Active Duty Offenders with PTSD Prior to Discharge from the Armed Forces*, 37 NOVA L. REV. 3 (2013).

21. *Id.* at 36.

22. E. Ann Jeschke, *The Moral Trauma of America's Warriors: Why We Must Treat Combat Posttraumatic Stress Disorder as a Bio-Psycho-Social-Spiritual Phenomenon*, 37 NOVA L. REV. 3 (2013).

23. *Id.* at 105.